

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GENOMETRICA RESEARCH, INC., THE
RESEARCH FOUNDATION OF THE STATE
UNIVERSITY OF NEW YORK,

Plaintiff,

- against -

BORIS GORBOVITSKI, VERA GORBOVITSKI,
ADVANCED BIOMEDICAL MACHINES, INC.,

Defendants.

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ORDER

CV 11-5802 (PKC) (AKT)

A. KATHLEEN TOMLINSON, Magistrate Judge:

The Court has received a letter motion from defendants' counsel [DE 84] seeking a further extension of the discovery status conference previously set in this case. That conference is currently scheduled for December 12, 2013. On July 1, 2013, after a lengthy conference with the Court, the parties were directed to undertake certain actions with regard to the discovery responses exchanged and to complete the Court-mandated meet-and-confer previously directed. *See* DE 72. Counsel were then to submit to the Court, three days prior to the next conference on August 22, 2013, a list of any outstanding issues which were not resolved during the meet-and-confer. The parties were cautioned that given the history and contentiousness of the discovery process that the court was contemplating the appointment of a Special Master to supervise discovery.

On August 16, 2013, the parties submitted a letter motion [DE 75] and asked for an extension of time within which to submit their list and to hold conference. Based on the representations of counsel regarding additional documents which the parties expected to receive,

that motion was granted. The conference was re-scheduled to September 27, 2013. Some of the same problems persisted and, on September 26, 2013, by Electronic Order, the Court further adjourned the conference to November 4, 2013. Sadly, the father of plaintiff's counsel passed away in October and counsel needed to travel overseas to the funeral. The Conference was put over to November 21, 2013. On November 18, 2013, defendants' counsel wrote to the court and advised that certain documents which had been subpoenaed from SUNY Stony Brook and still not been produced and that the parties were unable to prepare their "List of Deficiencies" without having reviewed and assessed those documents. The motion was granted and the conference was re-scheduled to December 12, 2013.

On December 9, 2013, as noted above, defendants' counsel submitted his letter motion seeking a further extension. Counsel reiterated that SUNY has still not produced any documents in response to the subpoena. In examining the subpoena, the Court learned that the return date on the subpoena was October 8, 2013. Some 60 additional days have passed without any compliance. In addition, defendants' counsel has taken no action to enforce the subpoena. Given the background of this case and the Court's previously expressed concerns about circumstances causing further delays, the Court fails to understand why defendants' counsel has not filed a proper motion in this Court to compel compliance with the subpoena and/or to issue an Order To Show Cause why SUNY should not be held in contempt for failing to comply with the subpoena. The Court is granting a short adjournment and directing defendants' counsel to file an appropriate motion, on notice to SUNY, seeking relief for SUNY's failure to timely comply with the subpoena. Defendants have until December 20, 2013 to file the motion. If the

motion is not filed by that date, then the defendants' right to make such a motion will be deemed waived by the Court.

The Court has absolutely no intention of accepting further delays in the completion of the discovery phase of this case. The status conference is put over to January 29, 2014 at 4 p.m. Under no circumstances will this conference be further adjourned. The parties' lists of deficiencies are to be submitted to the Court no later than the close of business on January 24, 2014.

SO ORDERED.

Dated: Central Islip, New York
December 10, 2013

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge